

j

.HE 1

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 349 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

=====

1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

CHANDRAKANT M SHAH

Versus

JA TRIVEDI & 2

Appearance:

MR RN SHAH for Petitioner

MR PM VYAS for Respondent No. 1

Respondents No. 2 & 3 served.

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 12/03/96

ORAL JUDGEMENT

This is a Civil Revision Application under
Section 29(2) of the Bombay Rents Act,1947, for & on
behalf of the original defendant no.1. One Smt.

Jivatben Barot, who happened to be the mother of the Respondent No.1 Jayshreeben Trivedi, has instituted Rent Suit No. 654 of 1981 before the Small Causes Court at Vadodara, for a decree of eviction against the petitioner and the respondents no. 2 & 3, on the ground that, the petitioner original defendant had sublet the suit premises to the respondents no.2 & 3. This case of Jayshreeben, the respondent no.1 landlady, came to be challenged by the petitioner and the respondents no. 2 & 3 by saying that, there was no subletting. Learned Trial Judge had framed the necessary issues, and on the appreciation of the evidence, a view has been taken that, the case of the defendant no.1 that he had taken the respondents no. 2 & 3 as the partners in the suit premises could not be established. This has resulted in to a decree of eviction by the learned Trial Judge dated 17-11-1985. The suit for possession came to be decreed, and the defendants were called upon to hand over the actual physical vacant possession of the suit premises to the plaintiff landlady on/or before December 31, 1986. The said judgment & decree came to be challenged before the District Court at Vadodara, by filing the Regular Civil Appeal No. 284 of 1986. This appeal came to be heard, decided and disposed of by the learned 2nd Jt. District Judge, Vadodara, vide the judgment dated February 02, 1994. Under this judgment, the appeal in question came to be dismissed with cost and the judgment and the decree of the Trial Court in the Rent Suit came to be confirmed. This judgment granting decree of eviction against the tenants is being challenged by the original defendant no.1- the tenant in the present Civil Revision Application before me.

Learned counsel Mr. R.N.Shah, who appears on behalf of the petitioner urges that, the Courts below were at an error in coming to the conclusion that, there has been a subletting- qua the suit premises and that, therefore no decree of eviction could have been granted. Mr. P.M. Vyas, the learned counsel who appears on behalf of the respondent no.1 landlady urges that, there has been a finding regarding subletting recorded by both the Courts below, and that, the documents would go to show that, petitioner Chandrakant Shah had sublet the premises to the respondents Rajendra Shah and Bhagwandas Patel. Learned counsel therefore urges that, no interference by me would be justifiable. The respondents no. 2 & 3 are served and there is no appearance on their behalf. Necessarily, therefore, there are no submissions for them.

Learned counsel Mr. Shah has placed reliance

upon two documents at exhibit-81 and exhibit-82. Indeed the Courts below were not pleased to recognise the document at exhibit-82. But when the reference is made to exhibit-81, it is abundantly clear that, the respondents no. 2 & 3, namely Rajendra Shah and Bhagwandas Patel had entered in the partnership business. The partnership deed came to be executed between them on 1st October, 1979. The premises where the business was to be run is said to have been situated at New Lehipura Road, Vadodara. Therefore it is apparently clear that, the respondents no. 2 & 3 had started the business under a partnership deed dated 1st October, 1979. There was some debate as to whether the partnership business for which a partnership was created by the respondents no. 2 & 3 could be said to have been running in the suit premises. A clear answer is being provided to this question by exhibit- 83, which happens to be a xerox of the certified copy of the shop's registration under the Bombay Shops & Establishment Act, 1948. The name of the business "M/s. Industrial

Hardware Stores" is shown. The suit premises which are situated at Sultanpura, Golvada, Lehipura New Road, Vadodara, are also described in this certificate. Firstly the name of two partners, namely Rajendra Shah and Bhagwandas Patel were shown as the owners of the establishment. Therefore when the document at exhibit-81 is read along with this certificate at exhibit-83, it is abundantly clear that, the respondents no. 2 & 3 had started their business in the name & style of 'Industrial Hardware Stores' in the suit premises. This could not have been done, if the suit premises were not to be sublet by the present petitioner - the original defendant no. 1 - the tenant, in favour of the respondents no. 2 & 3. This document would conclusively support the case of the plaintiff landlady regarding the subletting of the suit premises.

Exhibit-82 has not been completely recognised by the Courts below. But if it is not to be recognised at all, then one could not urge that the defendant no. 1 the petitioner-tenant would be protected. If exhibit-82 is to be taken into consideration on its face value, it is clear that, Chandrakant Shah, the petitioner and the original defendant-tenant had entered in the partnership business with effect from December 20, 1980. A conjoint reading therefore of these three documentary pieces of evidence at exhibit-81, exhibit-82 and exhibit-83 would go to show, beyond any manner of doubt that, Chandrakant Shah had sublet the suit premises to respondents No. 2 & 3. Later on, probably with a view to come out of the

clutches of the provisions of the Bombay Rents Act, 1947, exhibit-82 came to be executed, under which the original-tenant entered in the partnership business as a partner. This would not save the situation because, as already pointed out, under exhibit-82 two persons, namely Rajendra Shah and Bhagwandas Patel were put in the actual physical possession of the premises in question. Exhibit-82, as indicated above, has not been fully recognised by the Courts below. But a reference to exhibit-83 the certificate would once again go to show that, at a later date Chandrakant Shah was also shown as the owner of the establishment. It shall have to be accepted therefore that, under exhibit-81 a partnership was created between Rajendra Shah and Bhagwandas Patel with effect from 1st October, 1979 and they were to be in exclusive possession of the premises. Later on with a view to come out of the consequences which would follow, Chandrakant Shah had preferred to become the partner in the business. But as made clear earlier, this would not salvage the situation.

Learned counsel Mr. Shah urges with great vehemence that, there appears absolutely no material to warrant a conclusion that the respondents no. 2 & 3 were put in exclusive possession. A reference has been made not only to exhibit-81 but to the certificate at exhibit-83 which goes to show that the respondents no. 2 & 3 had started the business in the name & style of Industrial Hardware Stores in the suit premises. Nothing has been stated in exhibit-81 to show that at any moment of time any control over the premises or even over the part of the premises was retained by Chandrakant Shah. This would straightway lead to the conclusion that, there was a clear subletting and respondents no. 2 & 3 had entered in the premises as the sub-tenants of Chandrakant Shah.

The second contention in the same line coming from learned counsel Mr. Shah is that, no consideration is proved. This contention also appears to be untenable. The facts of the case would go to show that, the defendant no. 1 Chandrakant Shah who was in possession of the premises in the capacity of a tenant had preferred to put two persons in actual physical possession of the premises. Under the partnership deed at exhibit-81, Chandrakant Shah was never the partner. The premises are commercial premises situated at New Lehipura Road, Vadodara. Under such circumstances, it would be too much to expect the contention coming from learned counsel Mr. Shah that, there was no consideration whatsoever. The presence of the existence of the consideration can be

inferred from the set of the circumstances narrated above. This contention also therefore can not be accepted.

The conclusion therefore is that, both the Courts below were perfectly justified in coming to the conclusion that, a clear case of subletting has been established. In this view of the matter, the present Civil Revision Application fails and the same requires to be dismissed. It is therefore hereby accordingly dismissed.

There is a plea coming from learned counsel Mr. Shah for the petitioner that, some reasonable time should be granted to the tenant to vacate the premises. This proposition is being combated by learned counsel Mr. Vyas. The regard being had to the facts & circumstances of the case, it would be appropriate if the time for six months is granted to the petitioner for vacating the suit premises. In other words, the decree of eviction granted by the Courts below and confirmed by me in the present Civil Revision Application shall not be executed for a period of six months hereof. The condition precedent is that, the petitioner shall file the usual undertaking, saying specifically that, during this period of six months, he shall not transfer or assign in any way his interest in the premises to any other person. This undertaking should be filed within a period of three weeks hereof. If the undertaking is not filed as ordered above, within the said time frame, it is understood that, the petitioner-tenant shall not be entitled to retain the possession for the period of six months as stated earlier. In other words, on his failure to file the undertaking within the time frame, his right to continue in the premises for a period of six months shall come to an automatic end and the decree would become executable forthwith.

The Civil Revision Application is disposed of with the above said orders. Rule stands discharged. Interim stay stands vacated. No order as to costs.
